

SENATE BILL 673  
By Cooper

AN ACT to enact the "Electronic Recycling Act of 2005".

WHEREAS, communities may lack the infrastructure needed to provide for the convenient and affordable collection, refurbishment, processing, and recycling of electronic products; and

WHEREAS, used electronic products should be diverted from disposal and collected for recovery and recycling where practicable; and

WHEREAS, it is the intent of this general assembly to develop a flexible electronics recycling system ensuring that programs are available to assist cities, counties, and recyclers of electronic products that will safely collect and recycle the materials contained in used electronic devices; and

WHEREAS, recycling of electronics should be a market-based system with sufficient flexibility and incentives to create a sustainable infrastructure as much as possible; and

WHEREAS, the United States Environmental Protection Agency convened a multi-stakeholder dialogue called the National Electronic Product Stewardship Initiative (NEPSI) and brought nationally recognized experts from various fields together to develop policy recommendations for a national collection and recycling program for certain electronic products; and

WHEREAS, the program should work towards ensuring that economically viable and sustainable markets are developed for recycled materials generated through the recycling processes; and

WHEREAS, the program should include an educational element for consumers so that they can understand the program and make informed decisions; and

WHEREAS, the state of Tennessee desires to create a state program that anticipates and reflects the national program recommended by the National Electronic Product Stewardship Initiative;

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the “Electronics Recycling Act of 2005”.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) “Cathode ray tube” or “CRT” means a vacuum tube or picture tube used to convert an electronic signal into a visual image;

(2) “Computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage function, and may include both a computer central processing unit and a monitor, but such term does not include an automated typewriter or typesetter, a portable hand held calculator or device, or other similar device;

(3) “Consumer” means a person who purchases a covered electronic device in a transaction that is a sale;

(4) “Covered electronic device” means desktop and personal computers, computer monitors, portable computers, desktop printers, televisions, and video displays having a viewable area greater than nine inches (9”) when measured diagonally.

“Covered electronic device” does not include any of the following:

(A) A covered electronic device that is a part of a motor vehicle, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle;

(B) A covered electronic device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment; or

(C) A covered electronic device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier;

(5) "Department" means the department of environment and conservation;

(6) "Electronic Stewardship Association" or "ESA" means the organization established under section 6;

(7) "Manufacturer" means any person who, either as of the effective date of this act or thereafter, and irrespective of the selling technique used, including by means of remote sale:

(A) Manufactures electronic equipment under its own brand;

(B) Manufacturers electronic equipment without affixing a brand;

(C) Resells equipment produced by other suppliers under its own brand and label; or

(D) Imports or exports electronic equipment into the United States;

(8) "Monitor" means a separate visual display component of a computer, whether sold separately or together with a computer central processing unit/computer box, and includes a cathode ray tube, liquid crystal display, gas plasma, digital light processing, or other image projection technology greater than nine inches (9") when measured diagonally, its case, interior wires and circuitry, cable to the central processing unit, and power cord;

(9) "Orphan products" are covered electronic devices for which:

(A) The manufacturer no longer exists and a successor cannot be identified; or

(B) No manufacturer can be identified;

(10) "Portable computer" means a computer and video display that can be carried on a person;

(11) "Product category" means computer monitors, portable computers and televisions as defined in "covered electronic devices";

(12) "Purchase" means the taking, by sale, of title or of the right to use, in exchange for consideration;

(13) "Recycling" means any process by which covered electronic devices that would otherwise become solid waste are collected, separated, and processed to be returned to use in the form of raw materials or products;

(14) "Retailer" means a person who owns or operates a business that sells new covered electronic devices by any means to an end user;

(15) "Reuse" means any operation by which a covered electronic device changes ownership to be used for the same purpose for which it was originally put on the market without additional processing or remanufacturing;

(16) "Sell" or "sale" means any transfer for consideration of title or of the right to use to a consumer, by lease, donation or sales contract, including, but not limited to, transactions conducted through sales outlets, catalogs, the Internet, or any other, similar electronic means, and excluding wholesale transactions with distributors or dealers;

(17) "Television" means a stand-alone display system having a viewable area greater than nine inches when measured diagonally and able to adhere to standard consumer video formats such as PAL, SECAM, NTSC and HDTV and having the capability of selecting different broadcast channels and support sound capability;

(18) "Video display" means an output surface having a viewable area greater than nine inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, and cannot be easily removed from the display by the consumer, that produces the moving image on the screen. Displays typically use a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology; and

(19) "Visible fee" means a fee that is added to a new product at the point of purchase and is identified to the consumer separately from the product price.

### SECTION 3.

(a) On January 1, 2006, a covered electronic device recycling fee is hereby imposed upon every sale in this state of a new covered electronic device. Products will carry a fee of no greater than eight dollars (\$8.00). The maximum allowable fee shall be increased only by the legislature upon recommendation by the ESA.

(1) Every retailer that sells a new covered electronic device shall collect at the time of sale the fee imposed under this section for each new covered electronic device sold to an end user in the state.

(2) Each retailer shall transmit all fees collected under this section, minus three percent (3%) of total fee revenues which may be retained by the retailer for administrative costs associated with collecting the fee, to the ESA on or before the last day of the month following each quarter, accompanied by any forms prescribed by the department. If a covered electronic device for which the fee has been paid is returned to a retailer under warranty, the fee may be refunded,

and the retailer may deduct the amount of returned fee from the retailer's remittance to the ESA.

(3) Funds collected by the ESA shall be used solely for the purpose of funding collection, transportation, and recycling of covered electronic devices, including the discretionary use of funds by the ESA to promote the collection and recycling of covered electronic devices and market development. Collected funds may not be used to pay for activities associated with refurbishment or reuse of covered electronic devices.

(4) The department shall establish separate fees for different categories of products based on the estimated costs of collection, transportation and recycling for similar products. Fees collected on one category of product shall not be used to subsidize the collection, transportation and recycling of different categories of covered electronic devices.

(5) The fee imposed under this section shall be a visible fee at the point of sale, and imposed after any state, local or federal sales tax.

(6) The ESA shall submit a plan to the department for approval. The plan shall provide a funding methodology for collectors and recyclers authorized under section 12 that utilizes competitive bidding to set reimbursement rates. The development of the funding methodology shall be done in an open process consistent with state agency rule-making standards, including at least two (2) public hearings in different geographical regions of the state.

(b) On July 1, 2015, the department shall convene a stakeholder group to evaluate the program and make recommendations to the general assembly as to whether to:

(1) Continue the advanced recycling fee;

(2) Implement another financing alternative; or

(3) Determine that no outside financing mechanism is required to ensure that the system is financially solvent.

(c) Upon implementation of a national program to collect and recycle the covered electronic products, all of the requirements of this act, to the extent that they are inconsistent with the national program, shall become inoperative.

#### SECTION 4.

(a) The ESA shall do all of the following:

(1) Establish procedures for the imposition of the visible fee on covered electronic devices sold in this state;

(2) Beginning July 1, 2007, report to the general assembly on an annual basis. The purpose of the report shall be to update the general assembly regarding the progress on the implementation of this act, including recommendations for changes to this act that will ensure the most effective collection of electronic product recycling fees and whether the cap on the fee imposed under section 3 should be adjusted;

(3) Working with the department, publish the schedule of fees for covered electronic products based on product category six (6) months after passage of this act, and every two (2) years thereafter, taking into consideration the following factors:

(A) Current collection, transportation and recycling costs of covered electronic devices;

(B) Projected sales of covered electronic devices;

(C) Projected volume of returns of covered electronic devices to meet the performance measure in section 13; and

(D) Actual collection rates during the previous twelve-month period plus a yearly growth projection.

The ESA and the department may also take into consideration any surplus funds carried forward and reduce the fee when making fee amount determinations. Any changes in fee levels would take effect on January 1 of the following year, provided the department publishes the new schedule at least six (6) months in advance;

(4) Organize and coordinate public outreach using existing funds and resources appropriated to the ESA. The ESA shall utilize local or regional authorities to reach local residents and determine appropriate methods for education;

(5) Achieve the performance goal as specified in section 13. The ESA must establish the first year baseline performance goal as measure of pounds collected per capita, and project the performance goal for subsequent years to meet the goal established in section 13.

SECTION 5. Any party who is receiving funding under this program is prohibited from charging fees for collecting or recycling covered electronic devices, except under specified situations to be addressed by the ESA in the development of its plan. Such situations may include when funding from the ESA does not fully cover the net cost of collection or recycling of the covered electronic devices. This act shall not impact end-of-life fees in effect for products not covered by the act.

#### SECTION 6.

(a) The Electronic Stewardship Association is hereby established and recognized to seek recognition as a 501(c)(3) organization to administer collected fee proceeds from the retail sale of covered electronic devices pursuant to this chapter. The



purpose of the ESA will be to collect fee proceeds from retailers, distribute fee proceeds, work with the department in development and approval of an electronics collection and recycling plan, provide reports on the program to the department and the general assembly, and make recommendations regarding the improvement of the collection system. The ESA shall submit a budget annually to the department and utilize for administrative expenses no more than five percent (5%) of the total funds collected under authority of section 3.

#### SECTION 7.

(a) The ESA is intended to operate as an industry-led, multi-stakeholder entity for fulfilling the responsibility for management of a collection and recycling system for covered electronic devices.

(b) The plan submitted should incorporate, to the extent feasible, a geographic scope to serve all consumers who are subject to the fee. The plan shall also rely primarily on existing collection and consolidation infrastructure available for handling covered electronic devices.

(c) The ESA is hereby established to receive funds collected by the retailers, provide a funding methodology for reimbursement of collectors and recyclers, and to create a recycling system that will result in the environmentally sound and cost efficient collection, transportation, and recycling of covered electronic devices.

(1) The ESA shall utilize the funding for the sole purpose of carrying out the duties of this act. In the event that expenses from collection, transportation, and recycling activities exceed revenues from the ESA, the ESA is authorized to borrow up to ten percent (10%) of the projected annual net fee funds from outside sources, but ESA shall assume sole responsibility for repayment.

Borrowed funds must be repaid within two (2) years and in no event shall the state be made liable for any loan entered into by the ESA.

(2) By July 1, 2006, the ESA shall submit a plan to the department describing the details of the program. The plan shall be re-submitted to the department every two (2) years, and presumed approved if the plan includes all of the following:

(A) An estimate of the weight of covered electronic devices expected to be recycled to meet the performance measures;

(B) Details on the funding methodology to be used to fund the system;

(C) Details on how the state's existing solid waste and recycling collection infrastructure will be used to maximize product collection activities;

(D) A demonstration that the collection system will provide collection opportunities across the state, covering all areas where products are sold; and

(E) Procedures for monitoring the performance of product recyclers, including periodic audits, to meet the environmentally sound management requirements pursuant to section 8. In no case shall ESA activities interfere with or supersede existing roles and responsibilities of applicable state regulatory agencies.

(3)

(A) Once the ESA plan has been submitted to and approved by the department, the ESA may begin to disburse the funds and implement the plan. Should the department, upon review of the plan, find that it fails

to meet any of the requirements, or that the plan cannot reasonably be expected to achieve the performance measures, then the department may suspend fee collection until the plan has been modified and the modifications approved by the department.

(B) Once per calendar year, the ESA shall file a report with the department that describes the implementation of the system during the year. The report shall identify the total weight of covered electronic devices received during the preceding year by product category, together with the total weight of products recycled in each product category. The report shall also include a list of all parties participating in the system.

(4) The ESA shall have a board of directors consisting of eleven (11) members appointed by the department. The board members shall be appointed for two-year terms, except that for the initial term, three (3) members shall be appointed to one-year terms and eight (8) members shall be appointed to two-year terms. The department shall appoint a replacement if any vacancy occurs.

The board shall consist of representatives from:

- (A) Five (5) manufacturers of covered electronic devices;
- (B) Two (2) retailers of covered electronic devices;
- (C) One (1) recycler of covered electronic devices;
- (D) One (1) environmental not-for-profit organization with experience in the recycling of covered electronic devices; and
- (E) Two (2) government representatives, including one from local government.

(5) The board shall select the chief executive officer along with the officers of the ESA. The chief executive officer and officers will run the day-to-day operations of the ESA and report to the board at least once a year.

(d) The ESA shall encourage collectors, transporters, and recyclers to coordinate their efforts in order to minimize costs. All contracts issued by the ESA for recyclers shall be competitively bid and such contracts shall in no manner prohibit or affect any contract, franchise, permit, or other arrangement regarding the collection or recycling of other solid or household hazardous waste.

#### SECTION 8.

(a) The ESA may not disburse funds unless the plan demonstrates that the covered electronic devices collected by the applicant will be recycled, refurbished, or disposed in a manner that is in compliance with all applicable federal, state, and local laws, regulations and ordinances, and that the devices will not be exported for disposal in a manner that poses a significant risk to the public health or the environment.

(b) The department shall establish performance requirements for recyclers eligible to receive funds from the ESA. The department shall require recycling vendors, at a minimum, to demonstrate compliance with the United States Environmental Protection Department's Guidance on Environmentally Sound Management of electronic products in addition to any other requirements mandated by state law.

(c) The department shall keep on file and update a list of recyclers approved to recycle the covered electronic devices. A copy of the list, including all changes to the list since the previous year, shall be sent to the ESA annually for use in fulfilling its requirements under section 7 of this act.

(d) The department shall immediately remove from the list any recycler, who, as the result of an audit by the ESA or the department, has failed to meet the criteria

established under subsection (a), or who has been convicted of violating any federal, state, or local statute related to the collection, transport or processing of covered electronic products.

(e) The ESA and its board shall not be held financially liable for any violation of a federal, state or local law by a recycler appearing on the list created and updated by the department.

#### SECTION 9.

(a) Beginning January 1, 2006, a manufacturer may not offer for sale in this state a covered electronic device unless a visible, permanent label clearly identifying the brand or manufacturer of that device is affixed to it.

(b) By October 1, 2005, manufacturers of covered electronic devices must notify retailers or distributors that the covered electronic device is subject to the advance recovery fee.

(c) Beginning July 1, 2006, it is unlawful for a retailer to sell a covered electronic device in the state unless a visible fee is collected and remitted back to the ESA.

(d) In the event that a company is found in violation of this section, a civil penalty in the amount of twenty five dollars (\$25.00) per violation will be assessed by the department. Penalty amounts and violations will be calculated based on the number of individual units sold.

(e) Any fine collected pursuant to this act shall be transferred to the department. The money collected and distributed shall be used to offset enforcement expenses.

(f) Manufacturers and retailers, upon providing sixty-day notice to the attorney general and reporter and to a manufacturer or retailer who is not collecting and remitting the fee, has the right to sue that manufacturer or retailer for failure to collect or remit the fee to the ESA. During the sixty-day notice period, if the attorney general and reporter

initiates action against the manufacturer or retailer, then the ability of the manufacturers to sue is extinguished. Manufacturers and retailers who successfully challenge a non-complaint manufacturer are entitled to receive their litigation costs as well as double the penalties assessed under this act.

#### SECTION 10.

(a) The department, upon review of the report of the second annual report of the ESA, is authorized to ban the disposal of covered electronic products in the state. When making that determination, the department must find that the program has sufficient infrastructure in place to handle the collection and processing of all covered electronics products generated annually in the state. The department must also take into account market development for uses of the recycled materials, both within and outside the state, and other factors prior to proposing a disposal ban.

(b) If the state does institute such a ban, the state may fine anyone who knowingly disposes of a covered product in violation of the ban twenty-five dollars (\$25.00) per unauthorized unit of product plus the cost of recycling that product.

SECTION 11. The ESA shall establish a market development program to enhance existing, or develop new, end markets for remanufactured products and recycled materials. No more than one percent (1%) of the funds may be spent on this program.

#### SECTION 12.

(a) Any state agency or local government that purchases or leases equipment, materials or supplies shall require each prospective bidder to certify that it, and its agents, subsidiaries, partners, joint ventures and subcontractors for the procurement, have complied with section 3 and any regulations adopted by the department. Failure to provide the certification shall render the prospective bidder and its agents, subsidiaries, partners, joint ventures and subcontractors ineligible to bid on the procurement.

(b) Any person awarded a contract by the state agency or local government that is found to be in violation of section 3 is subject to the following sanctions:

(1) The entity to which the equipment, materials, or supplies were provided shall void the contract;

(2) The contractor may not to bid on any contract for a period of three (3) years; and

(3) If the attorney general and reporter establishes that the contractor, as a result of violating section 3, obtained any money, property or benefit, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

#### SECTION 13.

(a) The fifth year collection goal is one and three-fourths pounds (1.75 lbs.) per capita of covered electronic devices. After the fifth (5<sup>th</sup>) year or upon achievement of this collection goal, the department, working with the ESA, shall establish the performance goals as a measure of pounds collected per capita for future years.

(b) In establishing annual performance goals for the first five years, the ESA shall take into consideration the time required for ramping up the required infrastructure for such a system. If at any point following enactment of this act the ESA concludes that the one and three-fourths pounds (1.75 lbs.) per capita goal is not practicable, the ESA shall report such a finding to the department and the general assembly and recommend that the goal be adjusted.

(c) The ESA shall be responsible for achieving the collection goal.

#### SECTION 14.

(a) Manufacturers shall be responsible for all of the following:

(1) Collecting and remitting the advanced recycling fee on all direct sales to final customers in the state, including telephone, catalogue, and Internet sales;

(2) Making information available to consumers describing where and how to return, recycle and dispose of the covered electronic products, through the use of product operation manuals, industry or manufacturer websites, product labels, packaging inserts, or toll-free telephone numbers; and

(3) Providing recyclers with information on the type and location of hazardous substances in the covered products.

(b) Beginning January 1, 2007, or on or after the date Directive 2002/95/EC adopted by the European Parliament on January 27, 2003, and as amended thereafter, takes effect, no manufacturer shall offer for sale in the state any product or electronic device that is prohibited from being sold or offered for sale in the European Union on or after its date of manufacture, to the extent that Directive 2002/95/EC adopted by the European Parliament on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits such sale due to the presence of heavy metals. The department shall exclude from this requirement any product that contains a substance that is used to comply with consumer health, or safety requirements that are required by Underwriters Laboratories, the federal government or the state. The department may not adopt any regulations that are in addition to, or more restrictive than, the requirements expressly authorized in this section.

(c) Beginning January 1, 2007, and annually in subsequent years, manufacturers must submit a report to the department on their environmental improvements. As a minimum, the report shall contain:

(1) The estimated sale of the covered products within the state in the past year;



(2) A baseline, or set of baselines, showing the total estimated amounts of lead, mercury, hexavalent chrome, cadmium and PBB's utilized in RoHS exempt applications in products sold within the state in the previous year;

(3) A baseline, or set of baselines, showing the total estimated amounts of recyclable materials contained in covered electronic products sold within the state in the previous year, and increases the use of those materials over previous years; and

(4) A baseline, or set of baselines, describing any efforts to design covered electronic products for recycling goals or plans for further increasing design for recycling.

(d) In lieu of an individual report, manufacturers may submit the information in a collated report submitted via a trade association provided that information about an individual company shall be made available to the state upon written request by the department. The department may only make such a request for auditing purposes and not more than once during a five-year period. The state shall not make public any confidential business information claimed by the manufacturer in the report.

(e) A report submitted to another state or to the federal government that contains the same information as required in this section shall be accepted by the department in lieu of a separate report for the state.

SECTION 15. The department is authorized to adopt rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act compiled Title 4, Chapter 5.

SECTION 16. This act shall take effect July 1, 2005, the public welfare requiring it.